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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 92–77)

U.S. CUSTOMS SERVICE IMPLEMENTATION OF THE DUTY-FREE PROVISIONS OF THE NAIROBI PROTOCOL, ANNEX E, TO THE FLORENCE AGREEMENT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interpretive rule.

SUMMARY: The Nairobi Protocol, Annex E, to the Florence Agreement, established duty-free treatment for certain articles for the handicapped. The Nairobi Protocol is currently implemented in subheadings 9817.00.92, 9817.00.94, and 9817.00.96, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Specifically, these provisions provide duty-free treatment for "articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons."

This document sets forth the position of the U.S. Customs Service regarding certain issues arising under the Nairobi Protocol. These issues are: (1) the eligibility requirements for articles to receive duty-free treatment; (2) exclusions precluding duty-free treatment; and (3) procedural requirements of the Nairobi Protocol.

FOR FURTHER INFORMATION CONTACT: Scott Rosenow, Commercial Rulings Division, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Ave., N.W., Washington, D.C. 20229, (202) 566–2938.

SUPPLEMENTARY INFORMATION:

Background

The Agreement on the Importation of Educational, Scientific and Cultural Materials (17 UST 1835; TIAS 6129; 131 UNTS 25), known as the Florence Agreement, is an international agreement which provides duty-free treatment for a specified category of articles which were determined to facilitate the free exchange of knowledge and ideas. The United Nations Educational, Scientific, and Cultural Organization

(UNESCO) opened the Florence Agreement for signature in 1950. Following passage of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. No. 89–651), it entered into force for the United States on November 2, 1966. Public Law No. 89–651 implemented the various changes in the Tariff Schedules of the United States (TSUS) required by the Agreement. Included in the Florence Agreement were articles specially designed for the education, scientific or cultural advancement of the blind (Annex E).

On March 1, 1977, a protocol to the Florence Agreement was opened for signature at the United Nations. Known as the "Nairobi Protocol", this supplementary agreement greatly expanded the scope of the Florence Agreement, primarily by expanding duty-free treatment to articles for the use or benefit of the physically or mentally handicapped persons, in addition to articles for the blind. Furthermore, it expanded the Florence Agreement to embrace technologically new articles which would benefit this new class of intended beneficiaries.

In 1982 Congress passed the Educational, Scientific, and Cultural Materials Act of 1982 (Pub.L. 97–446, 96 Stat. 2346 (1982)), providing for duty-free treatment of various merchandise, including "[a]rticles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons." This was implemented by Presidential Proclamation 5021 dated February 14, 1983 (48 F.R. 6883), and was subsequently inserted as items 960.10, 960.12, and 960.15 of the TSUS. This was a temporary provision which expired on August 11, 1985. It was re-enacted under items 870.65, 870.66, and 870.67, TSUS, by section 1121 of the Omnibus Trade and Competitiveness Act of 1988 (Pub.L. No. 100–418, 102 Stat. 1107), and made retroactive to August 12, 1985. Section 1121 of the Omnibus Trade and Competitiveness Act and Presidential Proclamation 5978 dated May 12, 1989 (54 F.R. 21187), also provided for the implementation of the Nairobi Protocol expansion of the Florence Agreement under subheadings 9817.00.92, 9817.00.94, and 9817.00.96, of the Harmonized Tariff Schedule of the United States (HTSUS), which became effective on January 1, 1989.

The enacted form of the Nairobi Protocol as it is now implemented in the HTSUS is as follows:

> Articles specially designed or adapted for the use of benefit of the blind or other physically or mentally handicapped persons:
>
> *Articles for the blind:*
>
> | | |
> |---|---|
> | 9817.00.92 | Books, music and pamphlets, in raised print, used exclusively by or for them.* * * |
> | 9817.00.94 | Braille tablets, cubarithms, and special apparatus, machines, presses, and types for their use or benefit exclusively.* * * |
> | 9817.00.96 | Other * * * |

U.S. Note 4(a), subchapter XVII, Chapter 98, HTSUSA, states that, "the term '*blind or other physically or mentally handicapped persons*'

includes any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working."

U.S. Note 4(b), subchapter XVII, Chapter 98, HTSUSA, which establishes limits on classification of products in these subheadings, states as follows:

> (b) Subheadings 9817.00.92, 9817.00.94 and 9817.00.96 do not cover—
>
> (i) articles for acute or transient disability;
> (ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled;
> (iii) therapeutic and diagnostic articles; or
> (iv) medicine or drugs.

ISSUE I

Eligibility Requirements for Duty-Free Treatment

Recent litigation, such as the case of *Richards Medical Co. v. U.S.*, 720 F.Supp. 998 (CIT 1989), *aff'd*, 910 F.2d 828 (Fed.Cir. 1990), which involved eligibility for duty-free treatment under the Nairobi Protocol for hip prostheses, might seem to indicate that the Nairobi Protocol applies *only* to articles which are of a highly technological and invasive medical nature. To the contrary, however, this statute encompasses a wide variety of articles: from the highly technological and invasive pacemakers and hip prostheses to special spoons and dressing aids for the handicapped. Nevertheless, certain requirements must be met for an article to receive duty-free treatment.

A. *"Specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons."*

1. "Specially designed or adapted":

To receive duty-free treatment an article must be "*specially designed or adapted* for the use or benefit of the blind or other physically or mentally handicapped." Although the legislative history of the Educational, Scientific, and Cultural Materials Act of 1982 discusses the concerns of Congress that the design, modification or adaptation of an article must be significant so as to clearly render the article for use by handicapped individuals, no specific definition of these terms was established by Congress. *See*, Senate Report (Finance Committee) No. 97–564, September 21, 1982). *See also*, Headquarters Ruling Letter (HRL) 951004 dated March 3, 1992. When the agreement was being formulated at the international level, the United States attempted to incorporate an illustrative listing of materials into the text of the Protocol. Given the wide range of needs of handicapped persons, and the numerous technological and engineering advances occurring continuously, a comprehensive detailed listing was deemed to be impractical. "White House Conference on Handicapped Individuals," *National Health Care Policies for the Handicapped* (Carter Library 1978).

The Customs Service, however, has recognized several factors to be utilized on a case-by-case basis to determine whether a given article is "specially designed or adapted" within the meaning of this statute. In HRL 556449, a protest decision dated May 5, 1992, Customs ruled on a whether a wide variety of articles were "specially designed or adapted" within the intent of the Nairobi Protocol.

A primary factor to be considered concerns the *physical properties* of the article itself, *i.e.*, whether the article is easily distinguishable, by properties of the design and the corresponding use specific to this unique design, from articles useful to non-handicapped individuals. If an article is solely dedicated to use by the handicapped, *e.g.*, pacemakers or hearing aids, then this is conclusive evidence that the articles are "specially designed or adapted" for the handicapped for purposes of the Nairobi Protocol. The court in the *Richards Medical* case, *supra*, also utilized this rationale when it stated that instruments used to implant the prosthetic devices at issue in that case are "specifically and exclusively designed for prosthetic implantation and have no other apparent commercial use." An additional factor to be considered is the specific design associated with such articles. In HRL 556449, certain cutlery at issue incorporated angles in articles normally of straight design. The physics of leverage provided by this design enable handicapped individuals to compensate for weakness and lack of dexterity. However, not all articles which have a bend in their design are to be considered articles "specially designed or adapted" for the handicapped. The bathing brushes at issue in that ruling, which had a bend in their handle, were considered to be of a common design which did not provide any unique compensatory advantages.

Another factor established by Customs was the *"probability of general public use"*. This factor concerns whether any characteristics are present in an article that create a substantial probability of use by the chronically handicapped, whether the article is easily distinguishable from articles useful to the general public, and whether use of the article by the general public is so improbable that such use would be fugitive.

Applying the "probability of general public use" factor in HRL 556449, Customs held that a two-handled mug with a wide bottom and a low center of gravity, entered under subheading 9817.00.96, HTSUSA, is very commonly used by children and, thus, there was a high probability of use by the general public. In addition, the design of a low center of gravity and a corresponding top which helps to reduce spillage, is very common in traveling mugs used by the general public. Therefore, this indicated that the article was not specially designed for the handicapped and duty-free entry was denied for this product. On the other hand, in HRL 556449, Customs held that the likelihood of the general public utilizing a bedside toilet was remote, and, therefore, there was a strong indication that these articles were specially designed or adapted for the handicapped.

The "probability of general public use" factor also includes an evaluation of convenience. For example, the use of a fork with a clamp attached to it, which enables one-handed persons to cut food by clamping the fork with food attached to the side of a plate, would be inconvenient for non-handicapped individuals, thereby supporting the conclusion that this article is "specially designed or adapted" for the handicapped. This is not to say that all articles specially designed for the handicapped must be inconvenient for non-handicapped persons. Convenience is merely one factor to be weighed against other factors in making this determination.

Customs also has considered other factors in determining whether an article is "specially designed or adapted" for the handicapped: (a) whether articles are imported by manufacturers or distributors recognized or proven to be involved in this class or kind of articles for the handicapped; (b) whether the articles are sold in specialty stores which serve handicapped individuals; and (c) whether the condition of the articles at the time of importation indicates that these articles are for the handicapped. *See*, HRL 556090 dated November 8, 1991, HRL 556135 dated September 10, 1991 and HRL 087625 dated November 1, 1990.

In HRL 556090, Customs held that in support of finding that support garments, which are used by individuals diagnosed with scoliosis, hernia problems and post-polio syndrome, are "specially designed or adapted" for the use or benefit of the handicapped, was the fact that the garments were sold solely in medical supply stores. In HRL 556135, Customs held that special alarm clocks are "specially designed or adapted" for the handicapped. Supportive of this finding was that fact that the clocks were imported by manufacturers and distributors of devices for the deaf and hard of hearing, and that the clocks were of the class or kind of articles sold in stores which serve the hearing impaired. However, while these factors may be supportive of a finding that an article is "specially designed or adapted" for the handicapped, they are not dispositive. As stated previously, each of these factors must be weighed against other factors to determine if an article is specially designed or adapted for the handicapped. In HRL 556449, the supplier and importer were recognized as distributors of articles for the handicapped, but the mug and top, discussed earlier, were found not be articles "specially designed or adapted" for the use or benefit of the handicapped. In their condition as imported, the mug and tops were packaged and labeled, in Swedish and Norwegian, as a "children's mug", with a cartoon figure of a young girl also on the label. This is further proof indicating that these articles are not "specially designed or adapted" for the handicapped. Further, a plastic mixing bowl at issue in that case, which was claimed to be for the handicapped, clearly was not the type of article to be associated with a specialty store for the handicapped, nor did the bowl have any real design characteristics which would distinguish it as an article specially designed for the handicapped.

In summary, Congress never established a clear definition of what constitutes "specially designed or adapted" for the use or benefit of the handicapped. Customs has attempted to provide guidance on the factors to be considered and weighed against each other on a case-by-case basis, in order to determine whether an article is "specially designed or adapted" for the handicapped.

2. *"For the use or benefit":*

In order to receive duty-free treatment under the Nairobi Protocol, articles must be for the use *or* benefit of handicapped individuals. While the use of an article was discussed previously in its relation to what is "specially designed or adapted" for the handicapped, some confusion has arisen over the "use or benefit" requirement. It has been thought that the articles "for the use or benefit" of handicapped persons must be used specifically by a handicapped individual. However, these articles may be used in their own right or in conjunction with other articles that provide the actual benefit to a handicapped individual. In the *Richards Medical* case, *supra*, the court held that special physician's instruments, which were designed to fit the hip prostheses and assist in their implantation, were eligible for duty-free treatment under the Nairobi Protocol. The court stated:

> the fact that the handicapped persons themselves do not use these instruments, or that they do not remain in the body of the person, does not preclude classification of the instruments [under the duty-free tariff items of the Nairobi Protocol], because Congress specifically provided that the eligible articles should be 'designed or adapted for the use or benefit of the * * * handicapped persons'.

Richards Medical, 720 F.Supp. at 1001.

Although Customs has not specifically ruled on this issue, Customs will follow the guidelines set forth in the *Richards Medical* case and allow, as eligible, those articles that are specially designed or adapted *either* for the "use" *or* "benefit" of the handicapped.

3. *"Physically or mentally handicapped":*

To be eligible for duty-free treatment under the Nairobi Protocol, articles must be for the use or benefit of the "blind or other *physically or mentally handicapped persons*." U.S. Note 4(a), subchapter XVII, Chapter 98, HTSUSA, which incorporates the identical language of Headnote 2 of Part 4 of TSUS Schedule 9, states that:

> the term *'blind or other physically or mentally handicapped persons'* includes any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.

Obviously, with the inclusion of activities such as breathing, this is intended to cover a broad range of individuals. The only limit explicitly stated is that articles specially designed for individuals with an acute or short term disability are precluded from receiving duty-free treatment.

The only ruling by Customs on the issue of what constitutes a "handicapped" person under this statute was HRL 556090 dated November 8, 1991. In this ruling, Customs held that individuals who suffer from chronic arthritis, scoliosis, severe hernia problems and post-polio syndrome and who need heavy-duty support corsets, are "handicapped" within the meaning of the Nairobi Protocol and, therefore, the corsets are eligible for duty-free treatment. However, Customs also held in this ruling that brassieres designed for women who have had mastectomies are not eligible for duty-free treatment. Customs determined that women with mastectomies are not substantially limited in any major life activity. The focus of post-operative therapy for women who have had mastectomies is the reassurance that they are fully capable of leading full, productive lives after their operations.

In summary, what constitutes "handicapped" under the Nairobi Protocol appears to be very broad and subject to a liberal interpretation.

ISSUE II

EXCLUSIONS PRECLUDING DUTY-FREE TREATMENT UNDER THE NAIROBI PROTOCOL

There are several exclusions which preclude duty-free treatment of articles entered under the Nairobi Protocol. Congress explicitly implemented some exclusions in U.S. Note 4(b), subchapter XVII, Chapter 98, HTSUSA ("Note 4(b)), which states as follows:

> (b) Subheadings 9817.00.92, 9817.00.94 and 9817.00.96 do not cover –
>
> (i) articles for acute or transient disability;
> (ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled;
> (iii) therapeutic and diagnostic articles; or
> (iv) medicine or drugs.

In addition, based on a well-established principle of Customs law, "parts" of articles for the handicapped have also been excluded from receiving duty-free treatment under the Nairobi Protocol. The issues concerning "therapeutic" and "parts" exclusions have been the primary subject of Customs and judicial review under the Nairobi Protocol.

A. *"Therapeutic":*

This issue has been the subject of litigation and has involved determinations of what the medical applications of the articles at issue entail, along with the resulting benefit to the individual who uses these articles.

The issue of what constitutes a "therapeutic" article for purposes of the Nairobi Protocol was addressed in *Richards Medical Co. v. U.S.*, 720 F.Supp. 998 (CIT 1989), *aff'd*, 910 F.2d 828 (Fed.Cir. 1990). This case involved hip prostheses which were implanted in patients suffering from arthritis and the corresponding instruments which were used to

implant the prostheses. The court held that "therapeutic" articles are those that are used to heal or cure the condition causing a handicap, as opposed to those articles which are designed to compensate for, or adapt to, the handicapped condition. In summary, for the purposes of the Nairobi Protocol, only those articles which are *curative* can be excluded as therapeutic articles under this statute. The net result is that, due to the narrow definition of "therapeutic", few current medical articles would be considered to be therapeutic articles under this statute.

Only one ruling has been issued by Customs subsequent to the *Richards Medical* case pertaining to the meaning of the term "therapeutic" article. In HRL 556243, a protest dated December 2, 1991, Customs examined whether defibrillating pacemakers would be considered "therapeutic", and, therefore, precluded from duty-free treatment under the Nairobi Protocol. Customs held that defibrillating pacemakers do not heal or cure the underlying heart conditions of the handicapped individuals who utilize them, but merely control and help those individuals adapt to their handicapped condition. Therefore, the pacemakers at issue were not precluded from duty-free treatment as "therapeutic" articles under the Nairobi Protocol.

It should be noted that in recent litigation in the Court of International Trade, *Travenol Laboratories, Inc. v. United States*, Court No. 89–08–00469, decision pending, which involves medical devices used in dialysis treatments of individuals with End-stage Renal Disease, the court is re-examining the issue of what constitutes "therapeutic" under the Nairobi Protocol. This case could have a significant impact on the standard for determining whether articles are considered therapeutic, and, therefore, ineligible for duty-free treatment under this statute.

B. *"Parts":*

The category of excluded articles under the Nairobi Protocol which has received the most focus is the exclusion of "parts." This exclusion is not based on the explicit exclusions implemented by Congress. Rather, this is based on the well established principle of Customs law, reiterated by the courts, "that a tariff provision which does not specifically provide for parts does not include parts." *Westminster Corp. v. United States*, 432 F.Supp. 1055, 1058 (1977), *Glass Products, Inc. v. United States*, 641 F.Supp. 813, 815 (CIT 1986), *Murphy & Co. v. United States*, 13 Ct.Cust. Appls. 256, T.D.41201 (1925). As the Court in *Westminster* further elaborated, "Congress, in enacting legislation, would have provided for parts in [a] provision had it so intended." *See also*, HRLs 086303 dated February 13, 1990, and 087559 dated October 9, 1990.

This exclusion has received significant attention primarily because, under the TSUS, "parts" of articles for the handicapped were allowed duty-free treatment under the Nairobi Protocol. This duty-free treatment was based on HRL 074506 dated July 25, 1984, which erroneously concluded that "parts" of such articles were eligible for duty-free treatment under this statute. By its terms the ruling provided for free entry only "during the temporary free period which expired on August 11,

1985." In reexamining the issue under the Harmonized System, the Customs Service corrected the previous erroneous interpretation with respect to "parts" and the Nairobi Protocol.

Customs has issued several rulings on whether certain items constitute "parts", and, therefore, are precluded from receiving duty-free treatment under the Nairobi Protocol. The meaning of the word "part" under the tariff schedules has been the subject of extensive judicial examination. The traditional rule in this regard is "that a 'part' of an article is something necessary to the completion of that article. It is an integral part, * * *, without which the article to which it is joined could not function as such article." *United States v. Willoughby Camera Stores, Inc.*, 21 CCPA 332, T.D. 46851 (1933), cert. denied, 292 U.S. 640, 54 S.Ct. 773, 78 L.Ed. 1492 (1933). In addition, since a determination regarding whether an item constitutes a "part" is highly fact specific, the courts and Customs have applied other criteria to make this determination. It has been held that "the mere fact that two articles are designed to be used together is not alone sufficient to establish that either is a part of the other, or of their combined entity." *Westfield Manufacturing Company v. U.S.*, 191 F.Supp. 578 (1961). In addition, the Customs court has stated that:

> [m]any * * * objects, despite the fact that their usefulness is only in conjunction with other articles, retain a separateness of identity and a functional self-sufficiency which preclude their classification as parts. Furthermore, if an article possesses the characteristics of a completely finished and self contained object * * *, [it will not be considered a "part".]

Schick X-Ray Co. v. U.S., 271 F.Supp. 305 (1967). Similarly, Customs has held that a "part" must be identifiable by shape or other characteristics as an article solely or principally used as a "part". *See*, HRL 086835 dated April 17, 1990.

In HRL 556178, a decision on an internal advice request dated December 11, 1991, and HRL 555964, a protest decision dated July 25, 1991, Customs held that pacemaker leads were "parts" of pacemakers. Although these rulings did not discuss in great detail the "parts" issue, based on the traditional rule established in *Willoughby* and the standard stated in HRL 086835, it was determined that a pacemaker generally cannot function without a pacemaker lead which delivers the pulse to the heart. In addition, pacemaker leads are identified as an item solely or principally used as a "part". In HRL 087559, a protest decision dated October 9, 1990, Customs also held that resistors, microphones, and potentiometers used in hearing aids were "parts" and, therefore, precluded from duty-free treatment under the Nairobi Protocol.

Customs has determined in other cases that certain articles are not "parts". In HRL 556179, an internal advice decision dated December 9, 1991, Customs held that three components, consisting of an implant device, a speech processor, and a microphone headset, which together created a hearing aid system, were "articles", not "parts", even when the

components are imported separately. Customs determined that even though they are used solely in conjunction with each other, they retain a recognizable separateness of identity as self contained objects; no one component is associated as a subservient component to the others.

In HRL 556139 dated November 21, 1991, Customs held that a transmitter and receiver/headset which are used together to transmit television sound to the hard-of-hearing, and which are often imported separately, are specially designed for the handicapped and are not considered to be "parts". Although these components are used in conjunction with each other, they are completely finished and self-contained objects with a recognizable separate identity. No further physical integration between the transmitter and receiver/headset is required, and the transmitter and receiver/headset are operationally and functionally self-sufficient and do not undergo any further manufacture or manipulation after importation into the United States. In addition, the transmitter and receiver/headsets are not the type of articles that are identified as principally being used as "parts".

In HRL 555704 dated June 24, 1991, Customs held that prosthetic devices, although capable of use in conjunction with other prosthetic devices, are complete and independent articles rather than "parts" of articles. In this case, each prosthetic device was determined to be functionally self-sufficient. However, certain items imported for use in connecting prosthetic devices, primarily nut and bolt-like adapters, were found to be "parts".

On April 9, 1992, legislation (H.R. 4932) was introduced to include parts and accessories of articles specially designed or adapted for the use or benefit of the handicapped as duty-free under the Nairobi Protocol. However, it should be noted that if this legislation becomes law, it is Customs position that "parts" still must be established as "specially designed or adapted" items. General purpose parts such as standard design resistors would not necessarily be considered to be specially designed or adapted for the handicapped within the intent of Congress so as to receive duty-free treatment under the Nairobi Protocol.

C. *"Diagnostic Articles", "Medicine or Drugs", "Acute or Transient Disability", and "Spectacles, Dentures, and Cosmetic Articles for Individuals Not Substantially Disabled":*

The remaining exclusions have not been primary issues in any litigation or Customs Headquarters Rulings. These exclusions are relatively unambiguous, especially the medicine and drugs exclusion. Medicine would basically be considered a substance or preparation, including drugs, which are used in the treatment of disease or other ailments. Diagnostic articles are those used to assist in determining the presence of disease or other ailments, such as X-ray machines, sphygmomanometers, or stethoscopes. The exclusion of "spectacles, dentures, and cosmetic articles for individuals not substantially disabled" is also largely self-explanatory. In HRL 556090, Customs examined the support corsets at issue to determine if they were "cosmetic" articles. Customs de-

termined that they were intended for individuals with a substantial handicap, and not merely for an individual's appearance. Customs based this decision on several factors, such as the manner in which the support corsets were constructed – utilizing heavy-weight, highly durable fabric – and the fact that they are sold in medical supply stores, which distinguished them from "cosmetic" corsets.

The "acute or transient disability" exclusion parallels the basic premise of the previous discussion on the meaning of the term "handicapped". It was the intent of the Nairobi Protocol to benefit those individuals with *permanent* or *chronic* physical impairments and not short-term disabilities. There have been no court decisions on this issue. In HRL 556532 dated June 18, 1992, Customs ruled that certain crutches were of the class or kind which are used by individuals with acute or transient disabilities, such as sprained ankles. Therefore, these crutches are precluded from duty-free treatment under the Nairobi Protocol.

ISSUE III

Procedural Requirements of the Nairobi Protocol

A. *"International Trade Administration Form 362–P":*

To claim duty-free treatment under the Nairobi Protocol, an importer must submit an International Trade Administration (ITA) Form 362–P. Headquarters Telex 1227071 dated August 15, 1991, provides that entry summaries may be rejected for failure to submit certain non-waivable missing documents. The ITA 362–P Form cannot be waived. In addition, duty-free treatment can be denied for incomplete ITA 362–P forms. Contrary to the belief of some importers, the Customs Service is responsible for determining eligibility for duty-free treatment under the Nairobi Protocol. The mere submission of the ITA Form 362–P is not considered evidence of an article's eligibility.

The purpose of this form is to compile trade statistics that will enable an assessment of the effectiveness of the Nairobi Protocol, and, if necessary, assist in findings of injury of U.S. institutional and private firms affected by the duty-free treatment of these imports. The form requires that the importer provide a description of the article as well as the chapter 1–97 HTSUSA subheading which specifically describes the article. The information involving the importers and manufacturers is kept confidential and only statistics are made available to the public.

B. *"Nation Eligibility":*

The Nairobi Protocol to the Florence Agreement is a multilateral agreement with approximately twenty signatories. However, each signatory nation can apply an expansive interpretation to whom the benefits can apply. For entries of articles into the United States, there is no country limitation; all articles which meet the eligibility requirements are entitled to duty-free treatment regardless of whether they are from a

column one or column two nation. *See*, General Note 3(a) and (b), HTSUSA.

CONCLUSION

The Nairobi Protocol is a very broad statute which allows duty-free treatment for a wide variety of articles for the handicapped. Those who are considered "handicapped" include a wide class of individuals. The primary limitation for receiving duty-free treatment is for those items which are considered "parts" of articles. However, legislation is currently pending in Congress to expand the Nairobi Protocol to include parts and accessories of articles specially designed or adapted for the handicapped. *See*, H.R. 4932, 102d Cong., 2d Sess. While therapeutic articles are precluded from receiving duty-free treatment, the court-established standard for what constitutes therapeutic is very narrow and would, in effect, appear to preclude few articles from such treatment.

Dated: August 3, 1992.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

(T.D. 92–78)

DETERMINATION THAT MERCHANDISE IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA, MANUFACTURED BY XUZHOU FORGING AND PRESSING MACHINE WORKS, IS BEING PRODUCED BY CONVICT, FORCED OR INDENTURED LABOR

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Determination that merchandise is subject to 19 U.S.C. 1307.

SUMMARY: This document advises that the Commissioner of Customs, with the approval of the Secretary of the Treasury, has determined that certain machine presses/mechanical stamping presses, which are being, or are likely to be imported into the United States from the People's Republic of China (PRC), are being manufactured with the use of convict labor and/or forced labor and/or indentured labor by the XUZHOU FORGING AND PRESSING MACHINE WORKS, Jiangsu Branch, Xuzhou, Jiangsu Province, PRC. The Commissioner of Customs, pursuant to 19 CFR 12.42(f) has determined, on the basis of a Customs investigation, that such merchandise is being, or is likely to be imported into the United States in violation of Section 307 of the Tariff Act of 1930, as amended. As such importations of the aforementioned machine presses/

mechanical stamping presses shall be considered and treated as prohibited by Section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307), unless, pursuant to 19 CFR 12.42(g), 12.43, and 12.44, the importer establishes by satisfactory evidence that the merchandise was not mined, produced, or manufactured in any part with the use of a class of labor specified herein.

DATE: This determination shall take effect August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Maria E. Herrera, Acting Director, Fraud Investigations Division, Office of Enforcement, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW, Washington, D.C. 20229 (202) 566–6188.

SUPPLEMENTAL INFORMATION:

BACKGROUND

Section 307, Tariff Act of 1930, as amended, (19 U.S.C. 1307), provides in pertinent part:

> All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision.
>
> "Forced labor" is defined to mean:
>
> all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily. *See*, 19 U.S.C. 1307.

Pursuant to Section 307, the Secretary of the Treasury promulgated implementing regulations found at 19 CFR 12.42, *et seq*. These regulations set forth the procedure for the Commissioner of Customs to make a finding that an article is being, or is likely to be imported into the United States which is being produced, whether by mining, manufacture, or other means, in any foreign locality with the use of convict labor, forced labor, or indentured labor under penal sanctions so as to come within the purview of 19 U.S.C. 1307.

Paragraph (f) of Section 12.42, Customs Regulations (19 CFR 12.42(f)), provides that if the Commissioner of Customs finds that merchandise within the purview of 19 U.S.C. 1307 is being, or is likely to be, imported, [s]he will, with the approval of the Secretary of the Treasury, publish a finding to that effect in a weekly issue of the CUSTOMS BULLETIN and in the Federal Register.

FINDING

Pursuant to Section 12.42(f), Customs Regulations (19 CFR 12.42(f)), it is hereby determined that certain articles of the People's Republic of

China are being, or are likely to be, imported into the United States, which are being produced, whether by mining, manufacture, or other means, with the use of convict, forced, or indentured labor.

Accordingly, based upon this finding, Customs officers shall withhold release of any of these articles from the People's Republic of China. Such articles may be exported only.

Articles	Item number from the Harmonized Tariff Schedule (19 U.S.C. 1202)
Machine presses/mechanical stamping presses ..... (Manufactured by Xuzhou Forging and Pressing Machine Works)	8462.10.00

CAROL HALLETT,
Commissioner of Customs.

Approved: July 22, 1992.
PETER K. NUNEZ,
Assistant Secretary of the Treasury (Enforcement)

[Published in the Federal Register, August 14, 1992 (57 FR 36688)]

(T.D. 92–79)

CUSTOMS APPROVAL OF ALTOL PETROLEUM PRODUCTS SERVICE, INC., AS A COMMERCIAL GAUGER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of approval of Altol Petroleum Products Service, Inc., as a commercial gauger.

SUMMARY: Altol Petroleum Products Service, Inc., of Guayanilla, Puerto, Rico recently applied to Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils under Part 151.13 of the Customs Regulations (19 CFR 151.13). Customs has determined that Altol Petroleum Products Service, Inc. meets all of the requirements for approval as a commercial gauger.

Therefore, in accordance with Part 151.13(f) of the Customs Regulations, Altol Petroleum Products Service, Inc. is approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: August 7, 1992.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW, Washington, D.C. 20229 (202–927–1060).

Dated: August 12, 1992.

JIMMY E. HARRELL,
Acting Director,
Office of Laboratories and Scientific Services.

[Published in the Federal Register, August 17, 1992 (57 FR 37029)]

U.S. Customs Service

General Notices

TARIFF CLASSIFICATION TREATMENT OF U.S. PRODUCTS BY FOREIGN CUSTOMS ADMINISTRATIONS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice informing exporters and other members of the trading community of the appropriate procedure to follow regarding the tariff classification treatment accorded their products by foreign customs administrations.

SUMMARY: This notice informs exporters and other members of the trading community of the appropriate agency to contact if they have inquiries or complaints regarding the tariff classification treatment of their product by other countries, including classification under the Statistical Classification of Domestic and Foreign Commodities (Schedule B) and the Harmonized Commodity Description and Coding System (HS). It also describes the procedure followed by the agencies if the inquiry results in a classification dispute under the HS.

DATE: August 7, 1992.

FOR FURTHER INFORMATION CONTACT: Myles Harmon, Director, International Nomenclature Staff, U.S. Customs Service, 1301 Constitution Avenue, N.W., Room 2146, Washington, D.C. 20229; telephone (202) 927–0740.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This Notice reminds exporters and other members of the trading community of the appropriate procedure to follow if they have a question about or are dissatisfied with the tariff classification treatment accorded their product by another Customs administration. This information was previously described in a notice published in the Federal Register, on November 10, 1988, 53 Fed Reg. 45646 (1988), by the Office of the United States Trade Representative (USTR).

Subtitle B of title I of the Omnibus Trade and Competitiveness Act of 1988, Section 1210, places the responsibility on three agencies acting under the policy direction of USTR, to establish procedures to review

and develop responses to complaints and inquiries filed by exporters and other interested parties regarding the treatment of their products by other countries. These agencies are the Department of the Treasury (U.S. Customs Service), the Department of Commerce (Census Bureau), and the International Trade Commission (the Office of Tariff Affairs and Trade Agreements).

Exporters may direct inquiries to these agencies regarding: (1) the classification of goods under the Statistical Classification of Domestic and Foreign Commodities (Schedule B); (2) the classification of goods under the HS by other Customs administrations; and (3) other inquiries and complaints from interested parties concerning the HS treatment of articles produced in and exported from the United States.

Inquiries or complaints concerning disagreements over the classification of goods under the HS by other countries should be submitted in writing to the U.S. Customs Service, (Office of Regulations and Rulings, Attn: Director, International Nomenclature Staff). The written request should include a detailed description of the product, the name of the country whose classification is being questioned, the heading and subheading where the product is being classified, and the subheading and heading where the requestor believes the product should be classified. The request should also indicate whether the product has been the subject of an import transaction into the United States and include the pertinent details of such transaction.

In consultation with ITC and Census, U.S. Customs will review the pertinent information to determine the merits of the complaint. Where the U.S. view differs from that of the other Customs Administration, every effort will be made to first resolve the difference informally. This will usually take the form of correspondence requesting an explanation of the basis for the other administrations's classification of the product and providing U.S. Customs views on the product's classification. In the event that the matter is not resolved informally, the agencies will take such action or make such recommendations to the USTR as are considered consistent with U.S. export interests. If the other country is a contracting party to the Harmonized System Convention, these actions may include bringing the matter to the attention of the Harmonized System Committee under the provisions of Article 10 of the HS Convention governing dispute settlement, or in a technical proposal to amend the Harmonized System.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

DATES AND DRAFT AGENDAS OF TENTH SESSION OF HARMONIZED SYSTEM COMMITTEE AND SEVENTH SESSION OF HARMONIZED SYSTEM REVIEW SUBCOMMITTEE OF THE CUSTOMS COOPERATION COUNCIL

AGENCIES: U.S. Customs Service, Department of the Treasury, and U.S. International Trade Commission.

ACTION: Publication of the dates and draft agendas for the tenth session of the Harmonized System Committee and for the seventh session of the Harmonized System Review Subcommittee of the Customs Cooperation Council.

SUMMARY: This notice sets forth the dates and draft agendas for the next sessions of the Harmonized System Committee and of the Harmonized System Review Subcommittee of the Customs Cooperation Council.

DATE: August 12, 1992.

FOR FURTHER INFORMATION CONTRACT: Myles B. Harmon, Director, International Nomenclature Staff, U.S. Customs Service (202–927–0740) or Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202–205–2592).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The United States is a contracting party to the International Convention on the Harmonized Commodity Description and Coding System ("Harmonized System Convention"). The Harmonized Commodity Description and Coding System ("Harmonized System"), an international nomenclature system, forms the core of the United States' tariff, the Harmonized Tariff Schedule of the United States ("HTSUS"). The Harmonized System Convention is under the jurisdiction of the Customs Cooperation Council ("CCC").

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee ("HSC"). The HSC is composed of representatives from each of the contracting parties to the Harmonized System Convention. The HSC's responsibilities include issuing classification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System, or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium. The next session of the HSC will be its tenth, and it will be held from October 5, to October 16, 1992.

In order to ensure that the Harmonized System continues to reflect changes in technology and in patterns of international trade, the Harmonized System Review Subcommittee ("RSC") was created as a subcommittee of the HSC. As with the HSC, the RSC meets in Brussels, Belgium. The RSC is in the process of undertaking a sector-by-sector review of the Harmonized System. The review takes the form of proposals for amendments to the Harmonized System. It has reviewed the majority of the Harmonized System chapters to date. The last two sessions of the current review cycle of the RSC will be the seventh and eighth. The seventh session will be held from September 7 to September 18, 1992, and the eighth session from November 30 to December 11, 1992. During those sessions Harmonized System chapters 1–24, 4149, and 91–97 will be reviewed.

The RSC makes its recommendations for changes to the Harmonized System to the HSC. The HSC submits its decisions on the RSC's recommendations to the CCC with final approval expected in mid–1993. Pursuant to Article 16 of the Convention, amendments adopted by the CCC in 1993 will enter into force for contracting parties no earlier than on January 1, 1996.

In accordance with section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the Department of the Treasury, represented by the U.S. Customs Service, the Commerce Department, represented by the Census Bureau, and the U.S. International Trade Commission ("ITC"), jointly represent the U.S. government at the CCC. The Customs Service representative serves as the head of the delegation at the sessions of the HSC. The ITC representative serves as the head of the delegation at the sessions of the RSC.

Set forth below are the draft agendas for the next sessions of the HSC and of the RSC. Copies of available agenda-item documents may be obtained from either the Customs Service or the ITC. Comments on agenda items may be directed to the above-listed individuals.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

[See Attachments A, B, and C]

ATTACHMENT A
37.454 E

DRAFT AGENDA FOR THE SEVENTH SESSION OF THE HARMONIZED SYSTEM REVIEW SUBCOMMITTEE

Opening date: Monday, September 7, 1992 (10 a.m.).

Closing date: Friday, September 18, 1992.

I

SECTIONS ALREADY EXAMINED

A. *Section V:*

1. Subdivision of heading 27.10 ..... Doc. 37.455

B. *Section VI:*

1. Proposal by the participants in the Thai Seminar on Customs laboratories for the transfer of titanium dioxide from heading 28.23 to Chapter 32 ..... Doc. 37.456

2. Proposal by the Finnish Administration for the subdivision of heading 32.04 ..... Doc. 37.577

3. Proposal by the EEC for the amendment of the text of subheading 3214.10 ..... Doc. 37.457

4. Proposal by the EEC for the amendment of the structured nomenclature to heading 35.02 ..... Doc. 37.458

5. Proposal by the Canadian Administration for the amendment of heading 32.06 ..... Doc. 37.600

C. *Section VII:*

1. Proposal by the EEC for new subheadings for the copolymers of headings 39.05 and 39.06 ..... Doc. 37.459

D. *Section XI:*

1. Restructuring of the texts of headings 56.02 and 56.03 concerning felts and nonwovens ..... Doc. 37.220/I, para. 3 to 8 (RSC/6)

2. Scope of the terms "embedded in plastics", "coated", "covered" and "laminated" in Note 3(b) to Chapter 56 and Note 2(a) to Chapter 59 ..... Doc. 37.220/I, para. 9 to 12 (RSC/6)

3. Regrouping of all transmission and conveyor belting within a single Chapter ..... Docs. 37.220/I, para. 13 to 22 (RSC/6) 37.628

4. Proposal by the Swiss Administration for the subdivision of heading 60.02 ..... Doc. 37.460

5. Proposal by the Australian Administration for the subdivision of heading 63.05 ..... Doc. 37.461

I. *SECTIONS ALREADY EXAMINED (continued):*

E. *Sections XIII and XIV:*

1. Proposal by the Swiss Administration for the subdivision of heading 69.04 ..... Doc. 37.220/III, para 3 and 4 (RSC/6)

2. New subheading and corresponding Explanatory Note for heading 69.09 ..... Doc. 37.220/III, para 5 to 8 (RSC/6)

3. Proposal by the Austrian Administration concerning the expression "of precious or semi-precious stones" in Chapter 71 ..... Doc. 37.482

F. *Section XV:*

1. Proposals by the International Iron and Steel Institute concerning Chapters 72 and 73 ..... Doc. 37.462

2. Proposal by the Japanese Administration for the subdivision of subheading 7210.50 ..... Doc. 37.220/IV, para. 20 to 23 (RSC/6)

3. Proposal by the Japanese Administration for the subdivision of subheadings 7225.90 and 7226.99 ..... Doc. 37.220/IV, para. 37 to 40 (RSC/6)

4. Proposal by the EEC concerning heading 81.13 ..... Doc. 37.463

5. EEC proposal for the amendment of the structured nomenclature of headings 82.02 and 82.07 ..... Doc. 37.464

G. *Section XVI:*

1. Proposal by the Yugoslav Administration concerning Note 2 to Chapter 84 ..... Doc. 37.478

2. Proposal by the Yugoslav Administration concerning heading 84.03 Doc. 37.479

3. Proposals by the Canadian Administration concerning heading 84.43 and subheading 8443.50 ..... Doc. 37.220/V, para. 3 to 8 (RSC/6)

4. Proposal by the EEC to amend the structured nomenclature of heading 85.06 ..... Doc. 37.465

5. Proposal by Australian Administration concerning headings 85.24 and 85.42 ..... Docs. 37.466, 37.607

6. Proposals by the EEC and the United States Administration for the subdivision of subheading 8540.30 ..... Doc. 37.220/V, para. 20 and 27 (RSC/6)

H. *Section XVII:*

1. Proposals by the US Administration concerning heading 88.02 and subheading 8802.50 ..... Doc. 37.220/VI, para. 1 to 5 (RSC/6)

II

NEW SECTIONS TO BE EXAMINED

A. *Section I:*

1. Proposals by FAO for the amendment of headings 02.07 and 02.08 ..... Doc. 37.484

2. Proposals by FAO for the amendment of headings 04.03, 04.04 and 04.05 ..... Doc. 37.485

B. *Section II:*

1. Proposals by FAO concerning the classification of guar seeds and water chestnuts in Chapter 7 ..... Doc. 37.568

2. Proposals by the Japanese Administration for the amendment of Chapters 7 and 8 ..... Doc. 37.614

3. Proposals by FAO for the amendment of headings 08.01, 08.07 and 08.10 ..... Doc. 37.569

4. Proposal by FAO for a subheading for bulgur wheat in Chapter 11 ..... Doc. 37.570

5. Proposal by the Japanese Administration for a new Note 4 to Chapter 11 ..... Doc. 37.615

6. Proposals by the Japanese Administration concerning Chapter 12 ..... Doc. 37.616

C. *Section III:*

1. Proposal by the EEC for the transfer of oleo-chemicals from heading 15.19 to a new heading in Chapter 38 ..... Doc. 37.467

2. Proposal by the EEC for the transfer of refined glycerol from subheading 1520.90 to a new subheading in heading 29.05 ..... Doc. 37.468

D. *Section IV:*

1. Proposal by the EEC for the amendment of Note 2 to Chapter 16 ..... Doc. 37.448

2. Proposal by the EEC for the amendment of the structured nomenclature to heading 16.02 ..... Doc. 37.480

3. Proposal by the EEC for he subdivision of subheading 1702.10 ..... Doc. 37.442

4. Proposal by the EEC for the subdivision of subheading 2208.90 .... Doc. 37.443

5. Proposals by the Swiss Administration for the amendment of Chapter 17 ..... Doc. 37.571

6. Proposals by the Swiss Administration for the amendment of Chapter 18 ..... Doc. 37.572

7. Proposal by FAO for the subdivision of subheading 1902.40 ..... Doc. 37.573

8. Proposals by the Swiss and the Japanese Administrations and FAO for the amendment of Chapter 20 ..... Doc. 37.574

9. Proposal by FAO for the subdivision of heading 21.05 ..... Doc. 37.575

II. *NEW SECTIONS TO BE EXAMINED (continued):*

D. *Section IV (continued):*

E. *Section VIII:*

F. *Section IX:*

G. *Section X:*

H. *Section XVIII:*

IJ. *Section XIX:*

K. *Section XX:*

L. *Section XXI:*

III

ATTACHMENT B
37.629 E

DRAFT AGENDA OF THE SEVENTH SESSION OF
THE HARMONIZED SYSTEM REVIEW SUBCOMMITTEE

FIRST ADDENDUM TO DOC. 37.454

I

SECTIONS ALREADY EXAMINED

A. *Section V:*

Add the new documents for the following item:

"1. Subdivision of heading 27.10 ..... Docs. 37.658, 37.663"

B. *Section VI:*

Add a new document for the following item:

"1. Proposal by the participants in the Thai Seminar on Customs Laboratories for the transfer of titanium dioxide from heading 28.23 to Chapter 32 ..... Doc. 37.657"

Add a new document for the following item:

"2. Proposal by the Finnish Administration for the subdivision of heading 32.04 ..... Doc. 37.664"

Add the following new items:

"6. Possible amendments of the Legal Notes to Chapters 28 and 29 concerning compounds not chemically defined ..... Doc. 37.647

7. Proposals by the Finnish and Swiss Administrations for the amendment of heading 30.02 ..... Doc. 37.220/VIII, para 11 to 13 (RSC/6)

8. Proposal by the Swiss Administration for the subdivision of subheading 3703.20 ..... Doc. 37.220/VIII, para. 39 to 42 (RSC/6)

9. Proposals by the Canadian Administration for the amendment of the structured nomenclature to heading 37.02 ..... Doc. 37.677"

D. *Section XI:*

Add a new document for the following item:

"1. Restructuring of the texts of headings 56.02 and 56.03 concerning felts and nonwovens ..... Doc. 37.648"

Item 3, delete and substitute:

"3. Proposal by the United States Administration concerning transmission or conveyor belts or belting ..... Doc. 37.628"

E. *Sections XIII and XIV:*

Item 3, delete and substitute:

"3. Proposal by the Austrian Administration concerning the expression" of precious or semi-precious stones (natural, synthetic or reconstructed)" in Chapter 71 ..... Doc. 37.482"

I. *SECTIONS ALREADY EXAMINED (continued):*

F. *Section XV:*

Add a new document for the following item:

"2. Proposal by the Japanese Administration for the subdivision of subheading 7210.50 ..... Doc. 37.641"

Add the following new item:

"6. Proposal by the EEC for the amendment of Notes 1(c) to Chapters 75 and 76 ..... Doc. 37.642"

II

NEW SECTIONS TO BE EXAMINED

A. *Section I:*

Add the following new items:

"3. Proposal by the EEC for the amendment of the structured nomenclature to heading 01.05 ..... Doc. 37.572

4. Proposal by the EEC for the amendment of the structured nomenclature to heading 02.07 ..... Doc. 37.636

5. Proposal by the EEC for a new Subheading Note to Chapter 3 ..... Doc. 37.637"

B. *Section II:*

Add the new documents for the following items:

"3. Proposals by FAO for the amendment of headings 08.01, 08.07 and 08.10 ..... Doc. 37.660

4. Proposal by FAO for a subheading for bulgur wheat in Chapter 11 Doc. 37.661"

D. *Section IV:*

Delete and substitute:

"5. Proposals by the Swiss Administration for the amendment of Chapters 17 and 18 ..... Doc. 37.571"

Delete and substitute:

"6. Deleted"

Add a new document for the following item:

"11. Proposals by FAO for the amendment of headings 23.06 and 23.09 ..... Doc. 37.662"

Add the following new item:

"12. Proposal by the EEC for the amendment of the structured nomenclature to heading 21.01 ..... Doc. 37.638"

E. *Section VIII:*

Add a new document for the following item:

"2. Proposal by the New Zealand Administration for the amendment of the text of heading 41.09 ..... Doc. 37.668"

Add the following new item:

"4. Proposal by Switzerland for the amendment of the text of subheading 4104.10 ..... Doc. 37.678"

II. *NEW SECTIONS TO BE EXAMINED (continued):*

F. *Section IX:*

Add the following new items:

"3. Proposals by the EEC for the amendment of Chapter 44 ..... Doc. 37.639

4. Proposal by the United States Administration for the amendment of the structured nomenclature to heading 44.10 ..... Doc. 37.666"

G. *Section X:*

Add a new document for the following item:

"1. Proposal by ISO to revise the Notes to Chapter 48 ..... Doc. 37.669"

Add the following new items:

"3. Proposals by the EEC for the amendment of Chapters 48 and 49 ..... Doc. 37.640

4. Proposal by the United States Administration for the amendment of headings 47.06 and 47.07 ..... Doc. 37.667"

K. *Section XX:*

Add a new document for the following item:

"1. proposal by the New Zealand Administration to amend the structured nomenclature of heading 95.04 ..... Doc. 37.670"

ATTACHMENT C
37.486 E

DRAFT AGENDA FOR THE TENTH SESSION OF THE HARMONIZED SYSTEM COMMITTEE

Opening date: Monday, October 5, 1992 (10 a.m.).

Closing date: Friday, October 16, 1992.

N.B. Items marked (*WP) will be examined first by the presessional Working Party (Wednesday, September 30 (10 a.m.) to Friday, October 2).

I

ADOPTION OF THE AGENDA

Draft agenda	Doc. 37.486
Draft timetable	Doc. 37.487

II

REPORT BY THE SECRETARIAT

1. Position regarding Contracting Parties to the HS Convention; Recommendation concerning ozone layer depleting substances; list of administrations applying an HS-based tariff; list of HS-based tariffs available in the Secretariat	Doc. 37.488
2. Harmonized System policy issues examined by the Policy Commission	Doc. 37.489
3. Decisions taken by the Council at its 79th/80th Sessions	Doc. 37.490
4. Approval of decisions taken by the Committee at its 9th Session	Docs. 37.491 37.578
5. Technical assistance activities of the Nomenclature and Classification Directorate	Doc. 37.492
6. Progress report on the HS Commodity Data Base	Doc. 37.493
7. Cooperation with other international organizations	Doc. 37.494
8. Project for improving tariff classification work; Report on mission to Thailand	Doc. 37.495
9. Inquiries concerning classification in the CCCN	Doc. 37.619
10. Other.	

III

GENERAL QUESTIONS

1. Possible introduction of standard units of quantity in the Harmonized System	Doc. 37.496
2. Inventory of the HS review work	Doc. 37.497
3. Reuse of deleted HS code numbers	Doc. 37.498
4. Absorption of the Exchange of National Classification Rulings program by the HS Commodity Data Base project	Doc. 37.557

II. *GENERAL QUESTIONS (continued):*

IV

REPORT OF THE HS REVIEW SUBCOMMITTEE

V

REPORT OF THE PRESESSIONAL WORKING PARTY (AMENDMENTS TO THE NOMENCLATURE, THE EXPLANATORY NOTES OR THE COMPENDIUM OF CLASSIFICATION OPINIONS TO GIVE EFFECT TO THE COMMITTEE'S DECISIONS)

V. *REPORT OF THE PRESESSIONAL WORKING PARTY (AMENDMENTS TO THE NOMENCLATURE, THE EXPLANATORY NOTES OR THE COMPENDIUM OF CLASSIFICATION OPINIONS TO GIVE EFFECT TO THE COMMITTEE'S DECISIONS) (continued):*

(*WP) 14. Amendment to the Explanatory Note to heading 85.42Doc. 37.512

(*WP) 15. Amendments to the Explanatory Notes to headings 85.42 and 85.43, arising from the classification of electrostatic proximity tags/cards and "smart" cards ..... Docs. 37.513, 37.624

(*WP) 16. Classification Opinion arising from the classification of certain steel products in heading 72.08 ..... Doc. 37.526

VI

FURTHER STUDIES

1. Possible amendments to the Nomenclature and the Explanatory Note to heading 04.05 concerning the classification of "low-fat butter" products ..... Doc. 37.514

2. Classification of powdered sugar cane juice in heading 17.01: Reservation by the Brazilian Administration ..... Doc. 37.450

3. Possible amendments to the Nomenclature and the Explanatory Notes concerning the classification of powdered sugar cane juice ..... Doc. 37.449

4. Classification of medicated cough drops in heading 17.04: Reservation by the United States Administration ..... Doc. 37.515

5. Possible amendment of the Nomenclature and the Explanatory Note to heading 22.02 ..... Docs. 37.516, 37.649

6. Classification of homeopathic preparations ..... Doc. 37.517

7. Possible amendments to the Nomenclature and the Explanatory Note to heading 33.02 ..... Doc. 37.518

8. Amendments to the Nomenclature and the Explanatory Notes with a view to grouping together in heading 33.06 yarn presented as dental floss ..... Doc. 37.519

9. Amendments to the Explanatory Notes consequential to the amend ments to the Nomenclature concerning paper impregnated with diagnostic or laboratory reagents ..... Doc. 37.520

10. Definition of the terms "monomers", "homopolymers" and "copolymers" in Chapter 39 ..... Doc. 37.521

11. Scope of the expression "merely for reinforcing purposes" in the Explanatory Notes to Chapter 39 ..... Doc. 37.522

12. Amendments to the Nomenclature and the Explanatory Notes concerning the classification of tissue stock of a width less than 36 cm but more than 15 cm ..... Doc. 37.523

13. Possible amendment to the Explanatory Notes to Chapter 58 to define the term "terry" ..... Doc. 37.524

14. Possible amendments to the Nomenclature and the Explanatory Notes to Chapter 64 concerning snowboard boots ..... Doc. 37.525

IV. *FURTHER STUDIES (continued):*

VII

NEW QUESTIONS

VII. NEW QUESTIONS *(continued)*:

VIII

OTHER BUSINESS

IX

ELECTION OF CHAIRMEN AND VICE-CHAIRMEN OF THE HARMONIZED SYSTEM COMMITTEE AND ITS WORKING PARTY AND OF THE HS REVIEW SUBCOMMITTEE

X

DATES OF THE NEXT SESSION

HS REVIEW SUBCOMMITTEE

Eighth Session

Monday, November 30, 1992
Friday, December 11, 1992

SCIENTIFIC SUBCOMMITTEE

Sixth Session

Monday, January 25, 1993
Friday, January 29, 1993

HARMONIZED SYSTEM COMMITTEE

Working Party

Wednesday, April 14, 1993
Friday, Friday April 16, 1993

11th Session

Monday, April 19, 1993
Friday, April 30, 1993

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

Gregory W. Carman
Jane A. Restani
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Nils A. Boe

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 92–124)

UNITED ENGINEERING & FORGING, PLAINTIFF *v.*
UNITED STATES, DEFENDANT

Consolidated Court No. 87–10–01046

(Dated August 3, 1992)

JUDGMENT

AQUILINO, *Judge*: The plaintiff having filed a motion for judgment upon the records compiled by the International Trade Administration, U.S. Department of Commerce ("ITA") *sub nom. Final Determination of Sales at Less Than Fair Value, Certain Forged Steel Crankshafts From the United Kingdom*, 52 Fed.Reg. 32,951 (Sept. 1, 1987), and by the U.S. International Trade Commission *sub nom. Certain Forged Steel Crankshafts From the Federal Republic of Germany and the United Kingdom*, 52 Fed.Reg. 35,004 (Sept. 16, 1987); and the court having granted in part and denied in part plaintiff's motion per Slip Op. 91–101, 15 CIT ____, 779 F.Supp. 1375 (1991), and, pursuant thereto, having remanded the matter to the ITA; and that agency having filed with the court a *Redetermination on Remand of Final Determination of Investigation: Certain Forged Steel Crankshafts From the United Kingdom* (May 4, 1992); and the court having called a status conference this day with David E. Birenbaum, Esq. of Fried, Frank, Harris, Shriver & Jacobson for the plaintiff and Michael S. Kane, Esq. of the U.S. Department of Justice for the defendant; and counsel having confirmed that the plaintiff does not now contest the aforesaid redetermination on remand; Now, therefore, after due deliberation, it is

ORDERED that the *Redetermination on Remand of Final Determination of Investigation: Certain Forged Steel Crankshafts From the United Kingdom* (May 4, 1992) be, and it hereby is, affirmed; and it is further hereby

ORDERED, ADJUDGED AND DECREED that partial judgment enter in favor of the plaintiff based on the *Redetermination on Remand of Final Determination of Investigation: Certain Forged Steel Crankshafts From the United Kingdom* (May 4, 1992); and it is further

ORDERED, ADJUDGED and DECREED that, except as aforesaid, and in conformity with Slip Op. 91–101, 15 CIT ____, 779 F.Supp. 1375 (1991), this consolidated case be, and it hereby is, dismissed.

(Slip Op. 92–125)

ST. PAUL FIRE & MARINE INSURANCE CO. (SURETY FOR CARREON, INC.), PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 88–02–00094

[Plaintiff's Motion for Summary Judgment is granted. Defendant's Cross-Motion for Summary Judgment is denied.]

(Dated August 3, 1992)

Glad & Ferguson, (T. Randolph Ferguson and John M. Daley) for plaintiff.
Stuart M. Gerson, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, (*Pamela G. Larrabee*) for defendant.

MEMORANDUM OPINION AND ORDER

GOLDBERG, *Judge*: Plaintiff St. Paul Fire & Marine Insurance Company ("St. Paul") brought this action pursuant to 28 U.S.C. § 1581(a) (1988) challenging the denial by the United States Customs Service ("Customs") of its protest regarding the liquidation of forty-one entries of merchandise. St. Paul contends that the merchandise was liquidated by operation of law at the rate of duty claimed by the importer at the time of entry because Customs improperly extended the time for liquidation of the entries. Defendant asserts that it properly extended the time for liquidation of the forty-one entries, and that duties were appropriately assessed. The case is before the court on cross motions for summary judgment.

BACKGROUND

Plaintiff is the surety for Carreon Management Services, Inc. ("Carreon"), which made forty-one entries of merchandise at El Paso, Texas between July 14, 1981 and August 24, 1982. Carreon claimed duty-free treatment for the merchandise under Item 807.00, of the Tariff Schedules of the United States ("TSUS").

Item 807.00 provides duty-free treatment for imports of articles assembled abroad with components produced in the United States. Classification of merchandise under Item 807.00 is conditioned upon the importer's submission to Customs of detailed documentation including invoices, certificates of origin, foreign assemblers' declarations, and actual cost data.

Carreon failed to file, at the time of entry, or at any time thereafter, actual cost data and certificates of origin required by Customs to support its claim for duty treatment under Item 807.00, TSUS.

Customs extended the time for liquidation under 19 U.S.C. § 1504(b)(1)(1988) for the forty-one entries[1] because it was awaiting receipt of the required information from Carreon. Customs issued three one-year ex-

[1] St. Paul contends that Customs extended the time for liquidation for only thirty-one of the forty-one entries.

tensions for merchandise entered before February 1983, and two one-year extensions for merchandise entered thereafter.[2]

On April 5, 1984, and again on October 10, 1984, Customs issued a Request for Information (Form CF 28) to Carreon seeking the required missing data. Carreon failed to respond to both requests.

On January 4, 1985, Customs liquidated the forty-one entries. Customs denied Carreon's claim for duty-free treatment under Item 807.00, TSUS, and assessed duties. On March 3, 1985, Customs issued a demand for payment to St. Paul for the duties. At that time, St. Paul discovered that Carreon had discontinued business and would not pay the duties due Customs. St. Paul filed a protest on May 8, 1985 contesting the validity of the liquidations and the extensions for the time to liquidate. On August 20, 1987, Customs denied the protest, and St. Paul paid Customs $273,994.44, the duties due on Carreon's entries. St. Paul filed a summons with the court on February 10, 1988, and a complaint on March 28, 1988. Both St. Paul and the government move for summary judgment.

Discussion

1. *Standard of Review:*

Decisions by Customs to extend the period in which to liquidate entries are subject to judicial review. *International Cargo & Surety Ins. Co. v. United States*, 15 CIT ____, 779 F. Supp. 174, 176 (1991); *Detroit Zoological Soc'y v. United States*, 10 CIT 133, 137–138, 630 F. Supp. 1350, 1356 (1986); *Pagoda Trading Co. v. United States*, 9 CIT 407, 411, 617 F. Supp. 96, 99–100 (1985), *aff'd*, 5 Fed. Cir. (T) 10, 804 F.2d 665 (1986); and *Bar Bea Truck Leasing Co. v. United States*, 4 CIT 138, 140 (1982) (quoting *People v. United States Dep't of Agric.*, 427 F.2d 561, 567 (D.C. Cir. 1970)). These decisions will be upheld if they are proper under the statute, and are not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *International Cargo*, 15 CIT at ____, 779 F. Supp. at 176; *Detroit Zoological*, 10 CIT at 137–138, 630 F. Supp. at 1356.

Summary judgment is appropriate only where the pleadings and other documents on file demonstrate that there is "no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." USCIT R. 56(d). The party opposing summary judgment may not rest on its pleadings, but must respond with specific facts showing the existence of a genuine issue for trial. *See International Cargo*, 15 CIT at ____, 779 F. Supp. at 176; *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986) (*citing* Fed. R. Civ. P. 56 (e)); *United States v. Pent-R-Books, Inc.*, 538 F.2d 519 (2nd Cir. 1976), *cert. den.*, 430 U.S. 906 (1977); and *Stevens v. Barnard*, 512 F.2d 876 (10th Cir. 1975). In ruling on cross-motions for summary judgment, if the court determines that no genuine issues of material fact exist, the court may properly grant summary judgment in favor of the movant who is "entitled to judgment as a

[2] See Appendix for schedule of dates of entry, extensions, and liquidation.

matter of law." *Texas Apparel Co. v. United States*, 12 CIT 1002, 1004, 698 F. Supp. 932, 934 (1988), *aff'd per curium*, ___ Fed. Cir. (T) ___, 883 F.2d 66 (1989), *cert. den.*, 493 U.S. 1024 (1990) (quoting USCIT R. 56(d)).

2. *Statutory Limitations on Liquidation:*

Subsection (a) of 19 U.S.C. § 1504 provides that:

> Except as provided in subsection (b) of this section, an entry of merchandise not liquidated within one year from:
>
> (1) the date of entry of such merchandise;
>
> * * * * * * *
>
> shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer of record.

19 U.S.C. § 1504(a) (1988).

Subsection (b) of § 1504 permits Customs to extend the period in which to liquidate an entry if:

> (1) information needed for the proper appraisement or classification of the merchandise is not available to the appropriate customs officer;
>
> (2) liquidation is suspended as required by statute or court order; or
>
> (3) the importer of record requests such extension and shows good cause therefore.

19 U.S.C. § 1504(b)(1) (1988).

Customs may only grant three extensions and no extension may exceed one year. 19 C.F.R. § 159.12(a) & (e) (1991).[3] Therefore, the period for liquidation of merchandise cannot exceed four years from the date of entry.

Prior to 1978, "Customs could delay liquidation as long as it pleased, with or without giving notice." *International Cargo*, 15 CIT at ___, 779 F. Supp. at 177; *see also* S. Rep. No. 95–778, 95th Cong., 2d Sess. 32 (1978), *reprinted in*, 1978 U.S.C.C.A.N. 2211, 2242. Congress enacted Section 1504 in 1978 to "increase certainty in the customs process for importers, surety companies, and other third parties with a potential liability relating to a customs transaction." S. Rep. No. 95–778, 95th Cong., 2d Sess. 32 (1978), *reprinted in*, 1978 U.S.C.C.A.N. at 2243. Congress specifically noted that by the passage of Section 1504, "[s]ureties would * * * be better protected against losses resulting from the dissolution of their principals in instances where there has been undue delay in liquidating entries." S. Rep. No. 95–778, 95th Cong., 2d Sess. 32 (1978), *reprinted in*, 1978 U.S.C.C.A.N. at 2243.

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[3] 19 C.F.R. § 159.12(a) & (e) provide in pertinent part:

(a) *Reasons* – (1) *Extension*. The district director may extend the 1-year statutory period for liquidation for an additional period not to exceed 1 year * * *

* * * * * * *

(e) *Limitation on extensions*. The total time for which extensions may be granted by the district director may not exceed 3 years.

3. *Extension of Liquidation:*

Plaintiff claims that Customs' extensions of the time for liquidation were unjustified on two grounds. First, St. Paul argues that Customs had no valid basis to extend liquidation for insufficient information under § 1504(b)(1) beyond the second anniversary date of each entry. Specifically, plaintiff maintains that Customs had all the **information** it needed to properly classify the merchandise, i.e., to deny the claimed Item 807.00 classification, by the second anniversary date of each entry. Second, St. Paul contends that the total length of time of the extensions for each entry, which ranged from thirteen to twenty-nine months, was unreasonable under the circumstances.[4] Memorandum of Points and Authorities in Support of Plaintiff's Motion for Summary Judgment on the Complaint or, in the Alternative, for Summary Adjudication as to Ten Entries at 1–2.

Defendant responds that Customs made a determination that Item 807.00, TSUS, was the proper classification for the merchandise, that it extended liquidation to obtain information needed to liquidate the entry according to its correct classification, and that the court should defer to Customs' determination. Additionally, defendant contends that the second and third extensions of liquidation were proper because Customs found it more efficient to give the importer "the benefit of the doubt" until it had cause to determine that the required information would not be forthcoming. Defendant's Memorandum in Support of its Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment at 17.

The court addressed the issue of whether an extension for insufficient information under Section 1504(b)(1) was justified in *Detroit Zoological*, 10 CIT 133, 630 F. Supp. 1350. There, the court held that the term "information," as used in § 1504(b)(1), "should be construed to include whatever is reasonably necessary for proper appraisement or classification of the merchandise involved." 10 CIT at 138, 630 F. Supp. at 1356. Specifically, the court held "information" to include internal Customs advice requested by the importer.

Subsequently, in *International Cargo*, the court interpreted the term "information" to include internal information sought by Customs. 15 CIT at ___, 779 F. Supp. at 178. These interpretations of the term "information" in *Detroit Zoological* and *International Cargo* are sufficiently broad to cover the information Customs requested in the case at bar, namely cost data and country of origin information to support Carreon's claim under Item 807.00.

In *Detroit Zoological*, the court also addressed the issue of whether the length of an extension by Customs was reasonable. It held that the court should ordinarily "defer to Customs' determination that it needs

[4] St. Paul has also argued, in the alternative, that Customs failed to issue first extensions for seven entries and second extensions for three entries, and that these entries were therefore deemed liquidated at the rate of duty assessed at the time of entry. Customs claims that extensions were issued on these entries, but that the computer records reflecting the issuance of the extensions were lost. The court need not determine here whether the extensions were actually issued since it grants St. Paul's requested relief on other grounds.

additional information to liquidate an entry and therefore requires an extension of the statutory period." 10 CIT at 138, 630 F. Supp. at 1357. However, the extension period granted must be "for a **reasonable period of time relative to the situation**," and it cannot be "**so great as to constitute an abuse of discretion**." *Id.*, 10 CIT at 138–139, 630 F. Supp at 1357 (emphasis added). Based upon that reasoning, this court concludes that the number of one-year extensions granted by Customs, i.e., the total extension period, also must be reasonable in light of the circumstances.

In this case, Carreon's entry papers indicated that the merchandise would qualify for duty-free treatment under Item 807.00, TSUS. Customs had cause to expect Carreon to file the required supporting documentation for classification under Item 807.00, TSUS. Customs acted reasonably in preliminarily finding that the **proper** classification of the merchandise was under Item 807.00, TSUS. Yet, Customs could not liquidate the entries because it lacked "information" reasonably necessary to liquidate those entries under the **proper** classification. Therefore, the court finds that Customs was justified in granting the first one-year extensions of time to liquidate the merchandise to provide Carreon an opportunity to submit the supporting documentation.

Determining whether the total length of the extensions was proper requires an inquiry into its reasonableness in light of the circumstances. In this case, the importer made entries from July 1981 until August 1982, claiming classification of the merchandise under Item 807.00, TSUS. This classification is dependent upon the importer's submission to Customs of supporting documentation including certificates of origin and actual cost data. Carreon did not file actual cost data or certificates of origin at the time of entry.

Customs' regulation regarding the time period within which the importer must file actual cost data states:

> Actual cost data must be submitted **as soon as accounting procedures permit.** To insure that information used for Customs purposes is reasonably current, the importer shall ordinarily be required to furnish updated cost and assembly data **at least every six months**, regardless of whether he considers that significant changes have occurred. The 6–month period for the submission of updated cost or other data may be extended by the district director if such extension is appropriate for the type of merchandise involved, or because of the accounting period normally used in the trade, or because of other relevant circumstances.

19 C.F.R. § 10.21 (1991) (emphasis added).

Under the circumstances presented, Customs and Carreon **agreed** that Carreon "was required to submit cost submissions to the district director at the relevant port at six month intervals, and actual cost data was required to be submitted on a Customs Form 247 no later than 60 days after the close of the importer's fiscal year." Defendant's Response to Plaintiff's First Interrogatories, Response to Interrogatory No. 1.A.; *see also* Reply Brief in Response to Plaintiff's Opposition to Defendant's

Cross Motion for Summary Judgment at 4: Plaintiff's Reply to Defendants' Opposition to Motion for Summary Judgment and Response to Cross-Motion for Summary Judgment at 6; and Customs' Deposition, Exhibit 6, Section 13(h).

Applying the facts in a light most favorable to defendant by assuming that Carreon's fiscal year began on the date of its first entry, July 14, 1981, Customs expected Carreon to submit the actual cost data by no later than mid-September 1982. Based on the agreement between Carreon and Customs, it was reasonable for Customs to expect Carreon to furnish updated cost data at least every six months. Despite the guidelines set forth in Customs' regulation and the terms of Carreon's agreement with Customs, Carreon failed to submit the actual cost data or any updated data in 1982.

The court has held that Customs reasonably granted first extensions of the liquidation period in 1982 for the 1981 entries,[5] and in 1983 for the 1982 entries. The issue therefore, is whether, in light of the circumstances, Customs reasonably granted second extensions of the liquidation period in 1983 for the 1981 entries[6] and a similar extension in 1984 for the 1982 entries. And finally, whether Customs reasonably granted third extensions for the 1981 entries and some of the 1982 entries in 1984.

Customs granted these second and third extensions even though Carreon neither sent the required information nor made any effort to contact Customs regarding these entries and the missing documentation. Customs itself made no attempt to contact Carreon for the outstanding documentation until April 5, 1984, when it finally sent Carreon a Request for Information. After receiving no response, Customs sent another Request for Information on October 10, 1984. Again, Carreon failed to respond.

Given Carreon's failure to submit documentation within two years from the date it entered the merchandise, or to even contact Customs and affirm that it would submit the data, however late, the proper classification of the merchandise no longer resided under Item 807.00, TSUS. After the first one-year extension, which expired in mid–1983 for most entries, Customs had no cause to believe that Carreon would submit the required cost data. Accordingly, the second and third extensions, issued on the statutory basis that Customs had insufficient information to properly classify the merchandise, were unreasonable and constituted an abuse of discretion.

In *Pagoda Trading*, 9 CIT at 411, 617 F. Supp. at 100, the court held that where Customs' delay of liquidation is improper, plaintiff is prejudiced as a matter of law. The court finds that the lengthy delay of liquidation in this case was improper, and that St. Paul was prejudiced as a matter of law. Thus, all forty one entries are deemed to have been liqui-

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[5] Customs also properly granted a first extension in December 1982 for one 1982 entry.

[6] Customs also granted a second extension in December 1983 for one 1982 entry.

dated by operation of law at the rate of duty claimed by Carreon at the time of entry.

CONCLUSION

For the foregoing reasons, plaintiff's motion for summary judgment is granted, and defendant's cross-motion for summary judgment is denied. Customs is directed to reliquidate the subject entries as duty-free under Item 807.00, TSUS, as proposed by Carreon upon entry, and to refund to plaintiff the excess duties collected with interest as provided in 19 U.S.C. § 1520.

APPENDIX

Entry No.	*Entry date*	*First extension*	*Second extension*	*Third extension*	*Liquidation date*
81–202155–2	7/14/81	June 1982	June 1983	July 1984	1/4/85
81–202244–1	7/17/81	June 1982	June 1983	July 1984	1/4/85
81–202277–1	7/23/81	June 1982	June 1983	July 1984	1/4/85
81–202279–7	7/24/81	June 1982	June 1983	July 1984	1/4/85
81–202312–3	7/30/81	June 1982	July 1983	July 1984	1/4/85
81–202355–0	8/6/81	No record	July 1983	July 1984	1/4/85
81–202397–4	8/13/81	No record	July 1983	July 1984	1/4/85
81–202441–0	8/20/81	No record	July 1983	July 1984	1/4/85
81–202464–3	8/26/81	No record	July 1983	July 1984	1/4/85
81–202509–5	9/2/81	No record	July 1983	July 1984	1/4/85
81–202510–5	9/2/81	No record	July 1983	July 1984	1/4/85
81–202520–2	9/3/81	No record	Aug. 1983	July 1984	1/4/85
81–202559–0	9/11/81	Aug. 1982	Aug. 1983	July 1984	1/4/85
81–202598–5	9/18/81	Aug. 1982	Aug. 1983	July 1984	1/4/85
81–202627–2	9/24/81	Aug. 1982	Aug. 1983	July 1984	1/4/85
82–200041–1	10/9/81	Sept. 1982	Sept. 1984	July 1984	1/4/85
82–200091–6	10/22/81	Sept. 1982	Sept. 1983	July 1984	1/4/85
82–200161–4	11/5/81	Sept. 1982	Oct. 1983	Sep. 1984	1/4/85
82–200206–6	11/16/81	Oct. 1982	Oct. 1983	Sep. 1984	1/4/85
82–200264–2	11/30/81	Oct. 1982	Oct. 1983	Sep. 1984	1/4/85
82–200474–7	2/3/82	Dec. 1982	Dec. 1983	Feb. 1984	1/4/85
82–200491–2	2/8/82	Jan. 1983	Jan. 1984	Nov. 1984	1/4/85
82–200517–3	2/12/82	Jan. 1983	Jan. 1984	Nov. 1984	1/4/85
82–200522–5	2/16/82	Jan. 1983	Jan. 1984	Nov. 1984	1/4/85
82–200534–8	2/19/82	Jan. 1983	No record	Nov. 1984	1/4/85
82–200716–8	3/24/82	Feb. 1983	No record	NA	1/4/85
82–200818–3	4/7/82	March 1983	No record	NA	1/4/85
82–201412–2	7/4/82	June 1983	July 1984	NA	1/4/85
82–201454–6	7/21/82	June 1983	July 1984	NA	1/4/85
82–201462–7	7/23/82	June 1983	July 1984	NA	1/4/85
82–201492–8	7/28/82	June 1983	July 1984	NA	1/4/85
82–201546–4	8/5/82	July 1983	July 1984	NA	1/4/85
82–201566–8	8/6/82	July 1983	July 1984	NA	1/4/85
82–201592–7	8/10/82	July 1983	July 1984	NA	1/4/85
82–201622–7	8/13/82	July 1983	July 1984	NA	1/4/85
82–201644–7	8/17/82	July 1983	July 1984	NA	1/4/85
82–201665–4	8/19/82	July 1983	July 1984	NA	1/4/85
82–201693–9	8/24/82	July 1983	July 1984	NA	1/4/85
83–101243–2	1/9/82	Oct. 1983	Sept. 1984	NA	1/4/85
83–101299–5	11/12/82	Oct. 1983	Sept. 1984	NA	1/4/85
83–101390–7	11/24/82	Oct. 1983	Sept. 1984	NA	1/4/85

(Slip Op. 92–126)

FORMER EMPLOYEES OF KOMATSU DRESSER, PLAINTIFFS *v.* U.S. SECRETARY OF LABOR, DEFENDANT

Court No. 91–08–00559

(Dated August 3, 1992)

JUDGMENT

GOLDBERG, *Judge*: Upon consideration of the record and other papers filed herein, and upon determination that no appeal was filed from the Department of Labor's Final Results of Remand, the court finds that the Department of Labor's Final Results of Remand were rendered in conformity with the decision of this court set forth in Slip Op. 92–59 (Ct. Int'l Trade April 24, 1992). Therefore, it is hereby

ORDERED that the Department of Labor's Final Results of Remand, filed with the court on June 9, 1992, are sustained; and it is further

ORDERED that this action is dismissed.

(Slip Op. 92–127)

EXPORTACIONES BOCHICA/FLORAL AND FLORES DEL CAUCA, PLAINTIFFS *v.* UNITED STATES AND U.S. DEPARTMENT OF COMMERCE, DEFENDANTS, AND FLORAL TRADE COUNCIL, DEFENDANT-INTERVENOR

Court No. 91–11–00802

[Commerce determination sustained.]

(Dated August 4, 1992)

Akin, Gump, Hauer & Feld (*Patrick F.J. Macrory*) for plaintiff.

Stuart M. Gerson, Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch, United States Department of Justice, Civil Division (*Jane E. Meehan*); (*Patrick V. Gallagher, Jr.*) Office of Chief Counsel for Import Administration, U.S. Department of Commerce, of counsel, for defendant.

Stewart and Stewart (*Eugene L. Stewart, Terence P. Stewart, James R. Cannon, Jr.* and *Amy S. Dwyer*) for defendant-intervenor.

OPINION

RESTANI, *Judge*: This matter is before the court on plaintiffs' motion for judgment on the agency record. At issue is the Department of Commerce's third review of the antidumping duty order on fresh cut flowers from Colombia. The review covers the period March 1, 1989 to February 28, 1990. The final results of the review are found at 56 Fed. Reg. 50, 554 (Oct. 7, 1991).

The first issue is whether Commerce improperly declined to consider the request of Exportaciones Bochica/Floral ("Bochica") to revoke the antidumping duty order, as untimely. 19 C.F.R. § 353.25(b) provides in relevant part:

> During the third or subsequent annual anniversary months of the publication of an order * * *, a producer or reseller may request in writing that the Secretary revoke an order * * *.

19 C.F.R. § 353.25(b) (1990). ITA interprets this regulation to require that any revocation request be filed on the anniversary month of the order if it is to be considered in the review requested that month. *See* 19 C.F.R. § 353.22(a) (1990). Given ITA's administrative burdens and the need for prompt completion of reviews, this is not an unreasonable interpretation of the regulation.

The next issue is Commerce's choice of the highest cost-based constructed value as home market value for Flores del Cauca ("Cauca"). While Cauca did provide verifiable sales data, it failed verification with regard to costs. Contrary to its arguments, this does not make it a substantially complying respondent. While it may be inappropriate for Commerce to use the most adverse information available for truly substantially complying respondents, *see Holmes v. United States*, 16 CIT ____, Slip Op. 92–118, at 6 (July 24, 1992), Cauca does not fit that definition. Commerce discovered major omissions and discrepancies in Cauca's cost data. Thus, Commerce was permitted to draw adverse inferences and use the highest cost information available. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990). As Cauca does not have verifiable cost data, it cannot rebut the adverse inference drawn by Commerce. In these circumstances, Commerce is not required to use averaged data for other firms, as requested by Cauca.

The court finds no error in Commerce's determination.

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED
C92/130 7/21/92 Newman, S.J.	Defontaine, Inc.	90–4–00192	681.39 6.7% or 5.7%
C92/131 7/28/92 Newman, S.J.	Okura & Co.	90–9–00455	8417.90 5.7%

CATION DECISIONS

ED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
%	680.49 2.5% or 3%	Rollix Bearing, Inc. *v.* U.S., S.O. 91–3 (1991)	Milwaukee and Housten Geared slewing rings
	6902.10.10 Free of duty	Agreed statement of facts	Los Angeles LD-CB Refractories and Tuyeres

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	BAS VALU
V92/8 7/30/92 Goldberg, J.	Int'l Seaway Trading Corp.	82–3–00389	America price

LUATION DECISIONS

SIS OF UATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
an selling	Liquidated appraised values less 12% per	Agreed Statement of of facts pair	San Francisco, etc. Footwear

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